

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

)

CASE NO. 8:03CR152

)

Plaintiff,

)

v.

)

**MEMORANDUM
AND ORDER**

)

TRACY VAUGHN,

)

)

Defendant.

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)

This matter is before the Court on the Defendant's request for a certificate of appealability (Filing No. 159). Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 ("AEDPA"), the right to appeal the denial of a motion filed pursuant to 28 U.S.C. § 2255 is governed by the certificate of appealability requirements of 28 U.S.C. § 2253(c). 28 U.S.C. § 2253(c)(2) provides that a certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right:

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

....

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c).

A "substantial showing of the denial of a constitutional right" requires "a showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should

have been resolved in a different manner or that the issues presented were ‘ “adequate to deserve encouragement to proceed further.” ‘ “ *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (citation omitted).

For the reasons set forth in the previously issued Memorandum and Order (Filing No. 156) denying the Defendant’s § 2255 motion, the Court concludes that the Defendant has not made a substantial showing of the denial of a constitutional right as required by 28 U.S.C. § 2253(c).

IT IS ORDERED:

1. The Defendant’s request for a certificate of appealability (Filing No. 159) is denied;
2. The Clerk of Court shall provide a copy of this Order to the Eighth Circuit Court of Appeals; and
3. A copy of this Memorandum and Order shall be mailed to the Defendant at his last known address.

DATED this 20th day of April, 2007.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge